

REMARKS

Claims 1-15 and 17-34 are present in the Application. Claim 15 is indicated as allowable if rewritten in independent form.

Claim 29, indicated as allowable if rewritten in independent form, has been so rewritten. New Claims 30-33 correspond in substance to original Claims 2-4 and 24, but are dependent upon rewritten Claim 29 and have been amended accordingly. Thus Claims 29-33 are believed to be in condition for immediate allowance.

Claims 18 and 26 have been amended as suggested by the Examiner.

Claim 16 has been deleted, as the subject matter thereof was not properly shown in the drawing.

New Claim 34 is directed to a unique and totally unforeseeable feature of the present invention. "Both said first and second magnets are disposed on only one side of said hinge . . . yet bias said plates to remain in said closed orientation."

Claims 1-4, 6-14, 17-21 and 23-21 were rejected as anticipated by Feldhahn, U.S. 3,152,716, while Claims 1-14, 17-22 and 24-18 [sic] (presumably 24-28) were rejected as unpatentable over Kamen, U.S. 5,135,012, in view of Feldhahn.

Applicant does not comprehend the final paragraph of Section 6 (page 3) of the Office Action regarding Claims 9 and 10 and respectfully requests clarification by the Examiner.

The Examiner's characterization of Feldhahn appears to be correct insofar as it goes -- namely, the broad characterization of the hinge plates and magnets of Claim

1. However, the analogy fails when it comes to a consideration of the open and closed orientations.

With regard to the PLATES: the Feldhahn plates are not movable about the hinge axis between “a closed orientation wherein said first and second plates are generally parallel” and “an open orientation wherein said first and second plates are generally parallel” as required by Claim 1. Indeed, the Feldhahn open orientation illustrated in Fig. 1 clearly shows the first and second plates being generally perpendicular, rather than generally parallel.

With regard to the MAGNETS: Claim 1 requires that in the closed orientation “said first and second magnets are generally parallel, overlapping and in the same magnetic orientation” and in the open orientation “are generally parallel, non-overlapping and in opposite magnetic orientations, said first and second magnets being coplanar and aligned along a common axis.” In Feldhahn, the first magnet 25 and the second magnet 26 are “generally parallel” in both the open and closed orientations. However in Feldhahn, the first and second magnets appear to be “overlapping” in both the open orientation of Fig. 1 and the closed orientation of Fig. 2, and they appear to be “in opposite magnetic orientations” in both the open and closed orientations. (In other words, the Feldhahn first and second magnets are in opposite magnetic orientation, in that one has a north pole coming out of the paper and the other has a north pole going into the paper. Thus, the Feldhahn magnets meet only one of the first three requirements set forth in Claim 1 regarding the magnets.

Still with regard to the MAGNETS: in Feldhahn the first and second magnets are neither “coplanar” (that is, not in the same plane) nor “aligned along a common axis” in the open orientation, as required by Claim 1. (Indeed, it appears that in Feldhahn the first and second magnets are neither coplanar nor aligned along a common axis in either the open or closed orientation.) Thus, the Feldhahn magnets meet neither of the last two requirements set forth in Claim 1 regarding the magnets. Accordingly, while Feldhahn may show a pair of hinge plates, each containing a respective magnet, with the pair of plates defining a hinge axis, the plates do not correspond to the plates of Claim 1, since they are not movable to the open orientation defined in Claim 1, and the magnets do not correspond to the magnets of Claim 1 for no less than four separate and distinct reasons.

To summarize, the Feldhahn plates and magnets differ in such basic structural and functional respects from the plates and magnets of the present invention that Feldhahn cannot anticipate the present invention and, indeed, cannot even be said to represent art analogous thereto.

Feldhahn fails to disclose any particular application for his container, and certainly does not suggest that it be a cosmetic case, as called for by Applicant's Claim 8.

Turning now to the second prior art rejection, as set forth by the Examiner Kamen teaches “a hingeless cosmetic container” in which the magnets secured to the plates “maintain the container in a closed position.” The Examiner acknowledges that “Kamen is silent regarding pivoting the first and second plates to form a hinge.”

For the reasons set forth with regard to Feldhahn as an anticipatory reference, Feldhahn can not remedy the deficiencies of Kamen. Indeed, attempting to introduce the teachings of Feldhahn into Kamen might introduce significant problems if the Feldhahn magnets were to interfere with the efficacy of the Kamen magnets for their intended purpose.

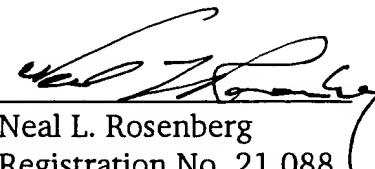
New Claim 34 is patentable over both of the cited references. In Feldhahn, biasing of the plates to remain in the closed orientation is achieved only with the use of two separate sets of first and second magnets, one set on one lateral side of the hinge and one set on the opposite lateral side of the hinge (as illustrated in FIG. 2). If there is only one set of first and second magnets, and that set is disposed on only one side of the hinge (as illustrated in FIG. 1), the set of magnets do not bias the plates to remain in the closed orientation. Kamen teaches that the first and second magnets must be "substantially coextensive" with the lid or cover (col. 4, lines 3-27), rather than having the magnets "disposed on only one side of said hinge," as required by Claim 34. Thus the references, whether considered separately or in combination, fail to teach a unique feature of the present invention whereby the magnets may be "disposed on only one side of said hinge . . . yet bias said plates to remain in said closed orientation."

In view of the above amendments and remarks, reconsideration of the rejection and allowance of all claims is respectfully requested.

If an extension of time is required to enable this document to be timely filed and there is no separate Request for Extension of Time, this document is to be construed as also constituting a Request for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such a Request for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17 and not submitted herewith should be charged to the Deposit Account of the undersigned attorneys, Account No. 01-1785; any refund should be credited to the same account. One copy of this document is enclosed.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN
Attorneys for Applicant
90 Park Avenue
New York, New York 10016
(212) 697-5995

By: 
Neal L. Rosenberg
Registration No. 21,088

Dated: New York, New York
July 25, 2002

SCHEDULE

18. (Amended) The hinge of Claim 1 wherein at least one of said first and second plates [incorporate] incorporates means [to preclude] for precluding relative sliding movement thereof parallel or transverse to the hinge axis.

26. (Amended) The hinge of Claim 1 wherein the hinge axis does not [increases] increase the physical dimensions of said hinge.

29. (Amended) [The hinge of Claim 1 wherein] A magnetic hinge defining a hinge axis, comprising:

a. a first hinge plate of non-magnetic material;
b. [said first plate has disposed therein] at least a spaced apart pair of
first magnets disposed in said first plate adjacent the hinge axis for movement therewith;

c. a second hinge plate of non-magnetic material; and
d. [and said second plate has disposed therein] at least a spaced apart
pair of second magnets disposed in said second plate adjacent the
hinge axis for movement therewith;

said first and second plates being movable about the hinge axis
between:

i. a closed orientation wherein said first and second plates are
generally parallel and at least partially overlapping, and each of said first magnets being
generally parallel to and overlapping a respective one of said second magnets, and in the
same magnetic orientation with respect thereto [in said closed orientation]; and

ii. an open orientation wherein said first and second plates are generally parallel and at least partially non-overlapping, and each of said first magnets being generally parallel to and non-overlapping a respective one of said second magnets and in aligned but opposite magnetic orientations with respect thereto [in said open orientation], said first and second magnets being coplanar and aligned along a common axis.